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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,773	06/23/2003	Edward A. Youngs	020366-067210US	9495

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TOWNSEND AND TOWNSEND AND CREW, LLP  
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SAN FRANCISCO, CA 94111-3834

EXAMINER
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MANOHARAN, MUTHUSWAMY GANAPATHY

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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02/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/601,773	Applicant(s) YOUNGS ET AL.	
	Examiner Muthuswamy G. Manoharan	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 30-34, 39, 40, 42 and 44-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-34, 39, 40, 42 and 44-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 30-34, 39, 40, 42 and 44-49 have been considered but are moot in view of the new ground(s) of rejection.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/17/2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 30-34,39-40,42, and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormick et al. (hereinafter McCormick) (US 6,169,894) in view over Teel (US 5200954).**

Regarding **claim 30**, McCormick discloses a method for providing transmission of a selected media program to a plurality of wireless handsets deployed in a wireless network having at least one cell site coverage area associated therewith (Abstract and Figure 1), the method comprising:

receiving a request to receive a selected media program from a first wireless handset in the cell site coverage area (Figure 3, steps 300 and column 6, lines 17 to 27);

establishing a first wireless channel upon which to broadcast the selected media program in the cell site coverage area(Figure 3, step 310 and col. 6, lines 30-50);

receiving a request to receive the same selected media program from a second wireless handset (inherent based on column 6, lines 59 to 66, as the reference discloses that multiple users may use the same broadcast channel, therefore receiving a request is repeated multiple times); and

in response to the request, determining whether the second wireless handset is in the cell site coverage area ("the switch then determines that the feature code is a

request for information over a broadcast channel and directs a local site", Col. 6, lines 31-33).

McCormick did not disclose specifically establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel. However, Teel discloses in an analogous art a method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset if the second wireless handset is determined to be outside the cell site coverage area, wherein the second wireless channel is different than the first wireless channel ("in a multicast network each site assigns a specific channel to a call independently of the channel assignments made by other sites", Col. 2, lines 35-48, "multisite avoids the problem of overlapping signals by having each area assign a different channel for any one call", col. 4, lines 11-25). Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to use the method of establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset wherein the second wireless channel is different than the first wireless channel in order to provide additional flexibility to the needs of the subscribers.

**Claim 40** is rejected for the same reason as set forth in claim 30.

McCormick discloses all the steps/elements of dependent **claims 31 and 47**, including, wherein the selected media program comprises a selection from a group consisting of: a cable program, a television program, a satellite program, and a radio program (column 3, lines 39 to 44).

McCormick discloses all the steps/elements of dependent **claims 32 and 45**, including wherein the selected media program comprises a pre-recorded media program (Col. 3, lines 35-62).

McCormick discloses all the steps/elements of dependent **claims 33 and 46**, including wherein the selected media program comprises a real-time transmission (Col. 3, lines 35-62).

McCormick discloses all the steps/elements of dependent **claims 34 and 48**, including wherein the selected media program comprises a selection from a group consisting of: audio program (Id.), video program, and data transmission (Id.).

McCormick discloses all the steps/elements of dependent **claims 39 and 42**, including multiplexing (inherent in view of column 6, line 35) the media program onto the first and second wireless channels (column 5, lines 20 to 40).

McCormick discloses all the elements of dependent **claim 44**, wherein the source provider is the wireless network (local cell and Figure 1).

McCormick discloses all the elements of dependent **claim 49**, wherein the wireless network communication scheme comprises a selection from a group consisting of: TDMA, FDMA, and CDMA (column 6, line 35).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Muthuswamy G. Manoharan whose telephone number is 571-272-5515. The examiner can normally be reached on 7:00AM-2:30 PM.

Application/Control Number:  
10/601,773  
Art Unit: 2617

Page 6

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eng George can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER